

[Cite as *In re Smith*, 2003-Ohio-4998.]

IN THE COURT OF CLAIMS OF OHIO  
VICTIMS OF CRIME DIVISION

IN RE: SEAN SMITH : Case No. V2002-51982

SEAN SMITH : DECISION

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Applicant : Judge J. Warren Bettis

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{¶1} This matter came on to be considered upon the Attorney General's appeal from the April 29, 2003, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which had granted applicant's claim for an award of reparations representing work loss.

{¶2} Applicant, a police officer, claims that he incurred work loss relating to "court time" that he would have been eligible for as a result of subpoenas that were issued to him. The panel found that applicant's assertion that he incurred work loss in the amount of \$848.88 was supported by the evidence.

{¶3} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant had presented sufficient evidence to meet his burden and that the Attorney General's method of calculation was

unreasonable.

{¶4} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶5} Neither applicant nor anyone on his behalf appeared at the hearing. In his brief, applicant stated that he agreed with the revised work loss calculations that were contained in Exhibit A that was attached to the Attorney General's brief. The Attorney General's work loss exhibits reflect the overtime hours that were calculated in accordance with the Cleveland Police Association Collective Bargaining Agreement. The revised work loss calculations show that applicant incurred work loss in the amount of \$434.08, net after taxes.

{¶6} Upon review of the file in this matter, the court finds that the panel of commissioners' decision was based upon incomplete information and that the work loss figure reflected gross wages rather than net wages.

{¶7} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was unreasonable. Therefore, this court reverses the decision of the three-commissioner panel, and hereby remands applicant's claim to the Attorney General for calculation and decision.

{¶8} Upon review of the evidence, the court finds the order of the panel of commissioners must be reversed and the Attorney General's appeal must be granted.

{¶9} IT IS HEREBY ORDERED THAT:

{¶10} 1) The order of April 29, 2003, (Jr. Vol. 2249, Pages 190-191) is reversed;

{¶11} 2) This claim is REMANDED to the Attorney General pursuant to R.C. 2743.191 for calculation and payment;

{¶12} 3) Costs assumed by the reparations fund.

J. WARREN BETTIS  
Judge

AMR/cmd

Filed 7-30-2003  
Jr. Vol. 2250, Pg. 162  
To S.C. Reporter 9-19-2003